

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **201201004**

Release Date: 1/6/2012

Index Number: 368.06-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:6

PLR-113853-11

Date:

September 30, 2011

Legend

Oldco =

Newco =

Shareholder A =

Shareholder B =

Business =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to your March 28, 2011, request for rulings on certain federal income tax consequences of the Transaction (defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Summary of Facts

OldCo was incorporated on Date 1. Oldco was treated as an S corporation. Oldco had one class of common stock, all of which was owned by Shareholder A. Oldco was engaged in Business.

On Date 2, a stock purchase agreement was entered into by Shareholder B, Shareholder A, and Oldco pursuant to which Shareholder B was to purchase all of the outstanding shares of Oldco from Shareholder A. This sale (the "Sale") closed on or about Date 2. In connection with the Sale, Shareholder B informed the attorney handling the Sale that he wanted to change the name of Oldco to Newco.

Transaction

Rather than changing the name of Oldco to Newco as requested by Shareholder B, the attorney handling the Sale erroneously filed Articles of Dissolution for Oldco and Articles of Incorporation for Newco. As a result, Oldco was dissolved and Newco was formed on Date 3 (the "Transaction").

Shareholder B did not realize that his request to change the name of Oldco to Newco had been handled improperly until Date 4. Shareholder B is now requesting a ruling that the Transaction be treated as a reorganization under section 368(a)(1)(F).

Representations

The following representations are made with regard to the Transaction:

(a) Immediately prior to the Transaction, Newco was engaged in no business activity, had no tax attributes (including those specified in § 381(c)), and held no assets (except for nominal assets necessary to pay incidental expenses or maintain Newco's status as a corporation).

(b) The fair market value of the Newco stock received by Shareholder B was approximately equal to the fair market value of the Oldco stock surrendered in the exchange.

- (c) Immediately following the consummation of the Transaction, Shareholder B owned all outstanding shares of Newco stock and owned such stock solely by reason of his ownership of Oldco immediately prior to the Transaction.
- (d) Newco had no plan or intention to issue additional shares of its stock following the Transaction.
- (e) Immediately following the consummation of the Transaction, Newco possessed the same assets and liabilities, except for assets used to pay expenses incurred in connection with the Transaction, as those possessed by Oldco immediately prior to the Transaction. Assets used to pay expenses constituted less than one percent of the fair market value of the net assets of Oldco immediately prior to the Transaction.
- (f) At the time of the Transaction, Oldco did not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Oldco.
- (g) Newco had no plan or intention to reacquire any of its stock issued in the Transaction.
- (h) The liabilities of Oldco assumed by Newco (within the meaning of § 357(d)) were incurred by Oldco in the ordinary course of its business and were associated with the assets transferred.
- (i) Shareholder B, Oldco, and Newco paid their respective expenses incurred in connection with the Transaction.
- (j) Oldco was not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).
- (k) Newco had no plan or intention to sell or otherwise dispose of any of the assets of Oldco acquired in the Transaction, except for dispositions made in the ordinary course of business.
- (l) Within 30 days of the date of this letter, the taxpayer will file all unfiled returns of Oldco and Newco for the year of the Transaction, as well as any unfiled returns for Newco for years subsequent to the year of the Transaction for which the filing deadlines (taking into account extensions of time) have already passed. In addition, Shareholder B will file any amended returns necessary to reflect the filing of these returns.

Rulings

Based solely on the information submitted and representations made, we rule as follows with regard to the Transaction:

- (1) The Transaction will be treated as the transfer by Oldco of all of its assets to Newco in exchange for Newco stock and Newco's assumption of Oldco's liabilities, followed by the distribution by Oldco of the Newco stock to Shareholder B in complete liquidation, and will constitute a reorganization within the meaning of § 368(a)(1)(F). Oldco and Newco will each be "a party to a reorganization" under § 368(b).
- (2) No gain or loss will be recognized to Oldco on the transfer of its assets to Newco in exchange for Newco stock and Newco's assumption of Oldco's liabilities. §§ 361(a), 357(a).
- (3) No gain or loss will be recognized to Newco on the receipt of Oldco's assets in exchange for Newco stock and Newco's assumption of Oldco's liabilities. § 1032(a).
- (4) The basis of each asset acquired by Newco will equal the basis of that asset in Oldco's hands immediately before the Transaction. § 362(b).
- (5) Newco's holding period for each asset acquired in the Transaction will include the period Oldco held that asset. § 1223(2).
- (6) No gain or loss will be recognized to Oldco on the distribution of the Newco stock to Shareholder B in exchange for Oldco stock. § 361(c)(1).
- (7) No gain or loss will be recognized to Shareholder B on the exchange of Oldco stock for Newco stock. § 354(a)(1).
- (8) The basis of the Newco stock received by Shareholder B will equal the basis of the Oldco stock surrendered by Shareholder B in exchange therefor. § 358(a)(1).
- (9) Shareholder B's holding period for the Newco stock received will include the period Shareholder B held the Oldco stock exchanged therefor, provided Shareholder B held that stock as a capital asset on the date of the Transaction. § 1223(1).
- (10) Newco will continue to use the taxpayer identification number previously assigned to Oldco. Rev. Rul. 73-526, 1973-2 C.B. 404.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Grid R. Glycer
Reviewing Attorney, Branch 6
Office of Associate Chief Counsel (Corporate)